

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of HELEN C. PEARSON and DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE, Florence, KY

*Docket No. 02-1955; Submitted on the Record;  
Issued March 18, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,  
A. PETER KANJORSKI

The issue is whether appellant has established that she had any disability after April 6, 2000.

On December 16, 1994 appellant, then a 61-year-old clerk, fell when her left knee gave way and landed on her left side, sustaining a transcervical fracture of the left hip. She stopped working on December 17, 1994 and underwent surgery that day for a reduction of the fracture. The Office of Workers' Compensation Programs accepted appellant's claim for a fracture of the left hip. Appellant received continuation of pay for the period December 17, 1994 through January 30, 1995. The Office began payment of temporary total disability effective January 31, 1995. Appellant returned to work part time on May 15, 1995 and full-time work on June 12, 1995. Appellant subsequently developed aseptic necrosis of the femoral head. She underwent surgery on June 20, 1996 for a hemiarthroplasty with bipolar cemented stem prosthesis.<sup>1</sup> Appellant returned to work on September 19, 1996. In a May 5, 1998 decision, the Office issued a schedule award for a 50 percent permanent impairment of the left leg. The Office paid the schedule award for the period July 3, 1997 through April 5, 2000.

On April 2, 2000 appellant filed a claim for continuing compensation on a CA-7 form. In an April 10, 2000 letter, the Office informed appellant that her compensation claim could not be paid at that time because there was no medical evidence that she was totally disabled. The Office noted that, although appellant retired effective February 28, 1998, the evidence at that

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<sup>1</sup> Appellant stopped working on April 1, 1996. The Office denied appellant's claim for a recurrence of disability from April 1 through June 19, 1996 but began paying temporary total disability compensation effective June 20, 1996. In a January 27, 1997 decision, the Office denied appellant's request for a hearing before an Office hearing representative on the grounds that the request was untimely. Appellant appealed to the Board. In an October 8, 1999 decision, the Board found that appellant had not met her burden of proof in submitting medical evidence to establish that her recurrence of disability from April 1 through June 19, 1996 was causally related to her employment injury. Docket No. 97-1831 (issued October 8, 1999).

time showed that she could perform limited-duty desk work with permanent restrictions. The Office requested an updated medical report which supported her ongoing disability for work.

In a September 14, 2000 decision, the Office denied appellant's claim on the grounds that the evidence of record showed that any disability for work was not causally related to her December 16, 1994 employment injury. Appellant requested a hearing before an Office hearing representative. In a March 29, 2001 decision, an Office hearing representative set aside the Office's September 14, 2000 decision and remanded the case because the case record submitted for the hearing was incomplete. In an August 7, 2001 decision, the Office once again denied appellant's claim for a recurrence of disability. Appellant requested a hearing before an Office hearing representative which was conducted on February 13, 2002. In a May 9, 2002 decision, the Office hearing representative affirmed the Office's August 7, 2001 decision.

The Board finds that appellant has not met her burden of proof in establishing that she had any disability as of April 6, 2000, the day after her schedule award expired.

A person who claims benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of his claim. Appellant has the burden of establishing by reliable, probative and substantial evidence that his medical condition was causally related to a specific employment incident or to specific conditions of employment.<sup>3</sup> As part of such burden of proof, rationalized medical opinion evidence showing causal relation must be submitted.<sup>4</sup> The mere fact that a condition manifests itself or worsens during a period of employment does not raise an inference of causal relationship between the condition and the employment.<sup>5</sup> Such a relationship must be shown by rationalized medical evidence of causal relation based upon a specific and accurate history of employment incidents or conditions which are alleged to have caused or exacerbated a disability.<sup>6</sup>

At the February 13, 2002 hearing, appellant testified that she retired on February 28, 1998. She indicated that she fell on her driveway in January 1998 while trying to get up one step and laid in the snow for an hour before her son found her and helped her into the house. She indicated that she did not file a claim for compensation due to her frustration with the Office. She stated that she did not go back to work after that fall.

In a January 20, 1998 report, Dr. James Farrell, a Board-certified neurologist, stated that appellant sustained a fracture of the left humerus and a left femoral condyle fracture when she fell while trying to get up onto her porch. He made no comment on whether appellant's condition was related to her December 16, 1994 employment injury.

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Margaret A. Donnelly*, 15 ECAB 40, 43 (1963).

<sup>4</sup> *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

<sup>5</sup> *Juanita Rogers*, 34 ECAB 544, 546 (1983).

<sup>6</sup> *Edgar L. Colley*, 34 ECAB 1691, 1696 (1983).

In an April 4, 2000 report, Dr. Robert K. Johnson, a Board-certified orthopedic surgeon, stated that appellant had pain in the left hip area and moderate atrophy of the left thigh. He indicated that appellant had a flexion contracture of 30 degrees in the hip, a slight diminution of rotation of the left hip, a mild flexion contracture of the left knee. He noted that appellant's left leg was one-half inch shorter than the right leg. He reported that appellant sustained a fracture of the knee in March 1994 and then in December 1994 it gave way, causing her to fall and fracture her left hip and femur. He concluded that appellant was permanently and totally disabled. In a July 5, 2000 report, Dr. Johnson recommended a functional capacity evaluation to determine appellant's work capacity. He questioned whether anyone would hire appellant at her age. Dr. Johnson's reports are insufficient to meet appellant's burden of proof. He described appellant's condition and stated that she was totally and permanently disabled. However, he did not provide a detailed explanation of how appellant's disability rendered her totally disabled as of April 6, 2000. His report, therefore, has limited probative value.

Appellant submitted numerous office notes from Dr. James Swanson, a Board-certified internist. In a November 10, 2000 note, Dr. Swanson stated that appellant was unable to return to work. He stated that even sedentary work would require appellant to be up and down and to travel to and from work. Dr. Swanson indicated that appellant could not do this on a consistent basis. He commented that appellant could not stand, climb stairs or sit for prolonged periods. Dr. Swanson recommended that appellant not return to work. He also noted that appellant had renal failure and complaints of angina with coronary arteriosclerosis. He concluded that appellant was totally disabled. However, Dr. Swanson did not give any opinion in which he stated that appellant's disability was directly related to her December 16, 1994 employment injury or the effects thereof and caused appellant to be totally disabled. His report therefore has limited probative value. Appellant has not submitted sufficient substantive, probative medical evidence which provides a reasoned, detailed explanation on how she was totally disabled for work as of April 6, 2000 as a result of her employment-related conditions.

The decisions of the Office of Workers' Compensation Programs dated May 9, 2002 and August 7, 2001 are hereby affirmed.

Dated, Washington, DC  
March 18, 2003

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

A. Peter Kanjorski  
Alternate Member